

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JAMES ZOLLICOFFER, ANTWOIN HUNT, and)
NORMAN GREEN, on behalf of themselves and)
similarly situated laborers,)
Plaintiffs,)

v.)

GOLD STANDARD BAKING, INC.,)
PERSONNEL STAFFING GROUP, LLC d/b/a)
MOST VALUABLE PERSONNEL d/b/a MVP,)
INC.,)
Defendants.)

Civ. No.: 13 C 1524

**DEFENDANTS' MOTION TO STRIKE
THE DECLARATION OF MARC BENDICK, Ph.D.**

Defendants Personnel Staffing Group, LLC ("MVP") and Gold Standard Baking, Inc. ("GSB") (collectively, "Defendants"), by and through their counsel, hereby move to strike the declaration of Marc Bendick, Ph.D. ("Dr. Bendick") pursuant to Fed. R. Evid 702 (the "Motion"). In support of the Motion, Defendants state as follows:

1. Dr. Bendick's original declaration was first disclosed as an exhibit to Plaintiffs' Motion for Class Certification on March 28, 2018. *See* ECF 557-1, Ex. 8. In response to errors identified by MVP counsel, Dr. Bendick submitted to Defendants a "revised" declaration on June 1, 2018 (the "Declaration").

2. Dr. Bendick's Declaration is inadmissible under Fed. R. Evid. 702 because it is not based on sufficient facts or data, is not the product of reliably applied principles and methods, and will not help the trier of fact to understand the evidence or determine any fact at issue. For example, Dr. Bendick failed to verify or investigate the incomplete primary source

data on which he relied, which had been compiled by Plaintiffs' counsel in a manner that appears to have omitted thousands of addresses for MVP workers that had been provided to Plaintiffs. Because address data was the key component to Dr. Bendick's analysis, his failure to account for all of this information in reaching his conclusions renders his opinions unreliable. He also failed to critically evaluate work that he outsourced to other individuals who have not been disclosed as experts in this case. And he failed to calculate or report margins of error underlying his use of small-sample survey data.

3. Dr. Bendick failed to estimate a race/ethnicity probability for a large portion of laborers referred by MVP to GSB, and as a consequence he underestimated the percentage of Non-Hispanic African American laborers among that population. He also failed to correctly calculate his own estimates regarding that population, further resulting in a significantly underestimated percentage of Non-Hispanic African American laborers. He failed to investigate the reasons for key missing information in the population that he was attempting to analyze. And he failed to rely on the same data sets from the U.S. Census Bureau for his estimates of the actual representation and expected representation of Non-Hispanic African Americans in each population.

4. These errors—and others—rendered each and every one of Dr. Bendick's conclusions unreliable. As Defendants' expert, Carole Amidon, Ph.D., establishes in her attached declaration, Dr. Bendick failed to employ in his analysis "the same level of intellectual rigor that characterizes the practice of an expert in [his] field." *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999).

5. For these reasons, and the reasons detailed in the accompanying memorandum of law in support of this Motion, Dr. Bendick's Declaration is inadmissible in this proceeding and should be stricken.

Dated: July 6, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Alex J. Maturi, certify that on July 6, 2018, pursuant to Fed. R. Civ. P. 5 and the Northern District of Illinois's General Order on Electronic Case Filing, sec. XI, I caused the attached **Defendants' Motion to Strike the Declaration of Marc Bendick, Ph.D.** to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the following:

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/s/ Alex J. Maturi

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